

Message Text

LIMITED OFFICIAL USE

PAGE 01 OECD P 19595 01 OF 02 151049Z

12

ACTION IO-14

INFO OCT-01 AF-10 ARA-16 EUR-25 EA-11 NEA-14 ISO-00 L-03

CIAE-00 COME-00 DODE-00 DOTE-00 EB-11 FMC-04 INR-11

NSAE-00 RSC-01 CG-00 COA-02 DLOS-07 SWF-02 AID-20

CEA-02 FRB-03 OPIC-12 SP-03 TRSE-00 CIEP-03 LAB-06

SIL-01 OMB-01 DRC-01 /184 W
----- 077847

R 151033Z AUG 74

FM USMISSION OECD PARIS

TO SECSTATE WASH DC 3465

INFO AMEMBASSY ANKARA

AMEMBASSY ATHENS

AMEMBASSY BERN

AMEMBASSY BONN

AMEMBASSY BRASILIA

AMEMBASSY BRUSSELS

AMEMBASSY BUENOS AIRES

AMEMBASSY CANBERRA

AMEMBASSY COPENHAGEN

AMEMBASSY THE HAGUE

AMEMBASSY HELSINKI

AMCONSUL HAMBURG

AMEMBASSY LONDON

AMEMBASSY MADRID

AMEMBASSY MOSCOW

AMEMBASSY MONROVIA

AMEMBASSY NEW DELHI

AMEMBASSY OSLO

AMEMBASSY OTTAWA

AMEMBASSY PANAMA

AMEMBASSY PARIS

AMEMBASSY ROME

AMEMBASSY STOCKHOLM

AMEMBASSY TOKYO

AMEMBASSY VIENNA

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 OECD P 19595 01 OF 02 151049Z

AMEMBASSY WELLINGTON

USMISSION EC BRUSSELS
USMISSION GENEVA
USMISSION USUN

LIMITED OFFICIAL USE SECTION 01 OF 02 OECD PARIS 19595

E.O. 11652: N/A

TAGS: EFIN, ETRN, OECD, UN

SUBJECT: UN CODE OF CONDUCT FOR LINER CONFERENCES

REF: A. STATE 164561

B. STATE 172016

C. OECD DOCUMENT DAF/INV/74.46

1. SUMMARY. OECD SECRETARIAT HAS RELEASED FIRST DRAFT REPORT ON COMPATIBILITY OF UN LINER CONVENTION AND OECD INVISIBLES CODE (REF C). THIS REPORT WILL BE USED AS BASIS FOR INVISIBLES COMMITTEE DISCUSSION SEPT. 23-25. REPORT REACHES FIRM CONCLUSION THAT CONVENTION AND CODE ARE NOT REPEAT NOT COMPATIBLE. SECRETARIAT EXPECTS MAJORITY OF IC MEMBERS WILL SUPPORT FINDING OF INCOMPATIBILITY BUT THAT EXISTENCE OF STRONG DISSENTING MINORITY WILL RESULT IN SPLIT REPORT. MAIN SWING VOTES WILL BE GERMANY, JAPAN AND BELGIUM. ACTION REQUESTED: DEPARTMENT PLEASE REPEAT ALL TELEGRAMS THIS SUBJECT NOT ALREADY SENT INFO OECD. END SUMMARY

2. AS EXPECTED, SECRETARIAT FIRST DRAFT OF UN LINER CODE STUDY REACHES FIRM CONCLUSION THAT UN CONVENTION AND OECD CODE ARE INCOMPATIBLE. THEY ARGUE THAT PROPOSED UN CONVENTION WOULD REQUIRE COUNTRIES "TO TAKE GOVERNMENTAL ACTION TO ENSURE THE IMPLEMENTATION OF RULES WHICH DISCRIMINATE AGAINST THIRD COUNTRY SHIPPING LINES REGARDING MEMBERSHIP OF LINER CONFERENCES AND REGARDING CARGO-SHARING WITHCA LINER CONFERENCES." SUCH GOVERNMENTAL ACTION WOULD NOT COMPLY WITH LIBERALIZATION OBLIGATIONS UNDER OECD CODE BECAUSE RESIDENTS OF OECD MEMBER COUNTRIES WOULD NOT HAVE UNRESTRICTED OPPORTUNITY TO OBTAIN MARITIME TRANSPORT SERVICES OFFERED BY RESIDENTS OF OTHER MEMBER COUNTRIES. SECRETARIAT CAREFULLY DISTINGUISHES LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 OECD P 19595 01 OF 02 151049Z

BETWEEN NATURE OF RESTRICTIVE PRACTICES--WHICH IN SOME CASES MAY BE NO MORE RESTRICTIVE THAN ALREADY EXIST UNDER PRIVATE LINER CONFERENCE ARRANGEMENTS--AND MANNER OF IMPLEMENTATION. ESSENTIAL POINT OF CONFLICT WITH OECD CODE ARISES FROM MANDATORY NATURE OF UN CONVENTION WHICH REQUIRES GOVERNMENTS TO ENSURE IMPLEMENTATION.

3. SECRETARIAT BELIEVES THAT APPARENT FLEXIBILITY

IMPLIED BY "UNLESS OTHERWISE MUTUALLY AGREED" IN 40:40:20
CARGO-SHARING PROVISION DOES NOT OFFER AN ESCAPE ROUTE
FROM MANDATORY NATURE OF CONVENTION, SINCE BY REFUSING TO
AGREE OTHERWISE, ANY COUNTRY COULD ASSURE ITSELF OF MINI-
MUM CARGO SHARES SPECIFIED IN CONVENTION. MOREOVER,
SECRETARIAT DOES NOT CONSIDER NON-CONFERENCE LINES TO BE
PRACTICAL ALTERNATIVE TO WELL-ENTRENCHED CONFERENCE SYS-
TEM, THUS SHIPPERS WOULD NOT HAVE SUFFICIENT FREEDOM OF
CHOICE BY SIMPLY AVOIDING CONFERENCE SYSTEM.

4. ON QUESTION OF CONTROLLING OBLIGATION IN EVENT OF
CONFLICT, SECRETARIAT CONCLUDES THAT IF SOME BUT LESS
THAN ALL OECD MEMBERS BECOME PARTIES TO CONVENTION, THEY
COULD NOT UNDER INTERNATIONAL LAW USE CONVENTION TO EX-
CUSE NON-COMPLIANCE WITH OECD CODE IN TRANSACTIONS WITH
OTHER OECD MEMBERS WHICH ARE NOT CONTRACTING PARTIES TO
CONVENTION.

5. SECRETARIAT PROPOSES FOUR POSSIBLE REMEDIES IN CASE
OF CONFLICT. MEMBER COUNTRIES COULD:

(1) DECLINE TO BECOME CONTRACTING PARTIES TO UN
CONVENTION;

LIMITED OFFICIAL USE

NNN

LIMITED OFFICIAL USE

PAGE 01 OECD P 19595 02 OF 02 151052Z

11

ACTION IO-14

INFO OCT-01 ISO-00 AF-10 ARA-16 EA-11 EUR-25 NEA-14 RSC-01

L-03 CIAE-00 COME-00 DODE-00 DOTE-00 EB-11 FMC-04

INR-11 NSAE-00 CG-00 COA-02 DLOS-07 SWF-02 AID-20

CEA-02 FRB-03 OPIC-12 SP-03 TRSE-00 CIEP-03 LAB-06

SIL-01 OMB-01 DRC-01 /184 W

----- 077860

R 151033Z AUG 74

FM USMISSION OECD PARIS

TO SECSTATE WASH DC 3466

INFO AMEMBASSY ANKARA

AMEMBASSY ATHENS

AMEMBASSY BERN
AMEMBASSY BONN
AMEMBASSY BRASILIA
AMEMBASSY BRUSSELS
AMEMBASSY BUENOS AIRES
AMEMBASSY CANBERRA
AMEMBASSY COPENHAGEN
AMEMBASSY THE HAGUE
AMEMBASSY HELSINKI
AMCONSUL HAMBURG
AMEMBASSY LONDON
AMEMBASSY MADRID
AMEMBASSY MOSCOW
AMEMBASSY MONROVIA
AMEMBASSY NEW DELHI
AMEMBASSY OSLO
AMEMBASSY OTTAWA
AMEMBASSY PANAMA
AMEMBASSY PARIS
AMEMBASSY ROME
AMEMBASSY STOCKHOLM
AMEMBASSY TOKYO
AMEMBASSY VIENNA
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 OECD P 19595 02 OF 02 151052Z

AMEMBASSY WELLINGTON
USMISSION EC BRUSSELS
USMISSION GENEVA
USMISSION USUN

LIMITED OFFICIAL USE SECTION 02 OF 02 OECD PARIS 19595

- (2) SEEK TO LODGE RESERVATION TO UN CONVENTION;
- (3) SEEK TO MODIFY UN CONVENTION;

(4) CONSIDER MODIFICATIONS TO OECD CODE TO BRING IT INTO LINE WITH UN CONVENTION (BUT AT RISK OF SIGNIFICANT DEPARTURE FROM ACCEPTED PRINCIPLE OF LIBERALIZATION). MEMBER COUNTRIES COULD NOT, HOWEVER, OBTAIN RETROSPECTIVE RESERVATIONS ON MARITIME ITEM OF OECD CODE, NOR WOULD THERE BE JUSTIFICATION FOR INVOKING DEROGATION CLAUSE TO OBTAIN DISPENSATION FROM OBLIGATIONS UNDER CODE.

6. SECRETARIAT DOCUMENT LEAVES CONCLUSIONS OPEN, PENDING DISCUSSION BY IC AT SEPTEMBER 23-25 MEETING. IN SECRETARIAT VIEW, IC WILL BE UNABLE AGREE ON CONCLUSIONS

AND SPLIT REPORT WILL RESULT. IN SUCH CASES, MINORITY VIEWS WOULD BE REFLECTED THROUGHOUT DOCUMENT, BUT MAJORITY WOULD WRITE RECOMMENDATION TO COUNCIL. THIS MEANS AT LEAST SEVEN OUT OF TWELVE IC EXPERTS MUST FAVOR INCOMPATIBILITY FINDING FOR RECOMMENDATION TO REFLECT THEIR VIEWS. AT COUNCIL LEVEL, HOWEVER, DECISIONS MUST BE UNANIMOUS, AND MISSION CONSIDERS IT UNLIKELY THAT COUNCIL COULD RECOMMEND THAT MEMBERS NOT BECOME CONTRACTING PARTIES TO UN CONVENTION.

7. SECRETARIAT (BERTRAND AND SCHLEPEGRELL) EXPECT THAT MAJORITY WILL SUPPORT SECRETARIAT FINDING OF INCOMPATIBILITY IN IC. MISSION CONCURS, AND SEES LIKELIHOOD THAT NUCLEUS OF "NO" COUNTRIES (US, UK, SWITZERLAND, SWEDEN, FINLAND) WILL BE JOINED BY AUSTRIA AND PROBABLY ITALY TO CONSTITUTE MAJORITY. BELGIUM, GERMANY AND JAPAN WILL LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 OECD P 19595 02 OF 02 151052Z

BE KEY SWING COUNTRIES WHOSE VIEWS MAY BE INFLUENCED BY IC DISCUSSION. ONLY SPAIN AND FRANCE PRESENTLY APPEAR FIRM OPPONENTS OF INCOMPATIBILITY FINDING.

8. US ALTERNATE ON IC MET AUGUST 6 WITH UK AND SWISS EXPERTS AND WITH BERTRAND AND SCHLEPEGRELL (IC SECRETARIAT) AND SCHULTZ (MARITIME TRANSPORT COMMITTEE SECRETARIAT) TO DISCUSS FUTURE SCHEDULE OF IC DELIBERATIONS AND ROLE OF MTC. SECRETARIAT IS AWAITING REPLIES TO TECHNICAL QUESTIONS SENT TO MTC MEMBERS IN JULY (DAF/MTC/74.33), WHICH ARE DUE SEPTEMBER 10. MTC SECRETARIAT WILL THEN MAKE SYNTHESIS OF REPLIES WHICH WILL BE REFLECTED IN CORRIGENDUM TO IC REPORT (REF C) PRIOR TO IC DISCUSSION SEPT. 23-25. NEW DRAFT OF IC REPORT WILL BE PREPARED AFTER IC MEETING BUT WILL NOT BE SUBMITTED FORMALLY OR INFORMALLY TO MTC FOR COMMENT. MTC MEETS OCTOBER 23 TO CONSIDER SYNTHESIS OF REPLIES ON TECHNICAL QUESTIONS, AND FINAL IC REPORT WILL REFLECT ANY NEW INFORMATION WHICH RESULTS. MTC SECRETARIAT (SCHULTZ) DOES NOT SEE ANY DANGER OF MTC SEEKING TO MAKE INDEPENDENT JUDGMENTS REGARDING COMPATIBILITY, WHICH IS RECOGNIZED TO BE UNDER IC JURISDICTION. SCHULTZ DOES NOT EXPECT AN INDEPENDENT REPORT TO COUNCIL FROM MTC. FINALLY, IC WILL MEET AGAIN ON NOVEMBER 4-6 TO FINALIZE REPORT, WHICH WILL THEN GO TO PAYMENTS COMMITTEE BY MID-NOVEMBER, AND TO COUNCIL BY EARLY DECEMBER.

9. SECRETARIAT REPORT (REF C) AIRPOUCHED AUGUST 13 TO STEINMETZ EB/TT/MA; ANTOUN, COMMERCE; AND KORP, TREASURY.

10. ACTION REQUESTED: DEPARTMENT PLEASE REPEAT ALL TELEGRAMS ON SUBJECT OF LINER CODE AND INDIVIDUAL COUNTRY

POSITIONS INFO OECD, UNLESS ALREADY SENT DIRECTLY TO US
BY REPORTING COUNTRIES. BROWN

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MARINE TRANSPORTATION, MARITIME LAW, COMMITTEE MEETINGS, FOREIGN POLICY POSITION, STEAMSHIP LINES
Control Number: n/a
Copy: SINGLE
Draft Date: 15 AUG 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: golinofr
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974OECDP19595
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740224-0710
From: OECD PARIS
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740845/aaaabmce.tel
Line Count: 279
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION IO
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 6
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: A. STATE 164561
Review Action: RELEASED, APPROVED
Review Authority: golinofr
Review Comment: n/a
Review Content Flags:
Review Date: 19 MAR 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <19 MAR 2002 by shawdg>; APPROVED <15 MAY 2002 by golinofr>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: UN CODE OF CONDUCT FOR LINER CONFERENCES
TAGS: EFIN, ETRN, JA, US, OECD, UN
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005